While all electric utilities have telecommunications needs, the manner in which these needs are met differs greatly among public power systems. Some public power systems satisfy their communications requirements primarily by leasing capacity from third parties. Other APPA members rely on communications systems built only to satisfy their own needs. Still others have built communications systems using some capacity on those systems for their own internal needs and leasing excess capacity to others (acting as the owner of a conduit rather than a telecommunications or information service provider). Finally, some public power communities have built communications systems to serve their own needs and to provide other telecommunications and information services to community residents and businesses.

It is APPA's desire to ensure that whatever legislation is enacted, the diverse needs of the public power communities can be met. Specifically, this means that for those utilities who are likely to lease space over facilities owned by a third party, reasonable access terms, conditions and rates are required. For utilities that will develop and operate communications systems for their own use or to provide conduit but not content service to others, legislation should not saddle them with common carrier obligations. Nor should legislation place obstacles in the path to public ownership of new telecommunications facilities or the public provision of telecommunications ***355** services. Indeed, the goals of universal service and vigorous competition can be enhanced if such public ownership and involvement is encouraged.

THE UNIQUE ROLE OF PUBLIC OWNERSHIP

APPA's members bring additional assets to the NII table. An important role for the NII is the delivery of governmental information and services, including those provided by schools, libraries, museums, health care facilities and other not-or-profit public institutions. Public power systems are a part of local government, and they share the objectives and aims of the community-quality service delivered economically.

Publicly owned electric utilities are well suited to provide delivery of these governmental services through their communications infrastructure. Community owned telecommunications systems can supply common benefits shared by police and fire departments, water and sewer operations, public health programs, education and other public functions. These systems can stimulate industrial location and help retain existing businesses. They can enable the creation of a burglar/fire/health emergency system and provide direct communication to citizens. They knit together city services.

Making Universal Service Available Universally

One of the goals of the Administration and Congress is to ensure that the concept of universal service-that basic telecommunications services are available to all at an affordable price-is preserved in the development of the NII. The Administration and Congress have good reasons to express concerns about the possibilities that our citizens may be divided into information "haves" and "have-nots". Telephone companies and cable television systems, while eagerly identifying the prospects of providing new services in fields that were previously denied them, have been almost cavalier in announcing that they will first "wire" those industries and neighborhoods that promise the greatest return on their investment.

For example, Bell Atlantic announced early this year that it will begin offering its advanced, interactive services first to Montgomery County and Northern Virginia. Only after these "plump pumpkins" have been picked will the company move on to the District of Columbia, Prince Georges County, and other less affluent portions of the metropolitan Washington area. One can only wonder if they will ever get around to the small communities and rural areas outside the metropolitan areas that represent "slim pickings" in terms of revenues per customer and return on investment.

This attitude is very familiar to communities served by public power. The electric utility industry likes to brag that it was the originator of the concept of universal service. But the plain, hard truth is that universal electric service would never have developed on a timely basis in the absence of municipally owned utilities and rural electric cooperatives. When small cities, towns and rural communities got tired of waiting for a private company to extend service to their residents, the people took the matter into their own hands, organizing consumer owned utilities to provide electric service. Because these new utilities were consumer owned and not4or-profit, they were capable of serving small, isolated communities that private companies said they couldn't afford to serve.

A Yardstick for Competition

Consumer owned telecommunications systems and services can fulfill that same need in the NII-assuring that all consumers have access to the same telecommunications services regardless of their affluence or volume of business. But that answers only part of the question. How can Congress and the Administration ensure that even the small, isolated and less affluent communities receive the same quality of service at an affordable price that their more populous and affluent neighbors receive? The answer lies in encouraging organization of publicly owned communications infrastructure- whether through public power systems or other state or local agencies-and participation by these publicly owned systems in the development and operation of the NII.

These consumer owned, not-for-profit providers of telecommunications and information services can perform the same function as publicly owned electric utilities-providing a yardstick of competition against which to measure the price and quality of services provided by investor owned, for-profit providers of these services. In fact, the Glasgow Electric Plant Board proved the value of publicly owned systems in this regard, beginning with cable television.

In testimony before the Committee last year, I explained how Glasgow's public power system extended the "yardstick of competition" concept from electric power rates to cable television. In the 1980s, Glasgow, a community of 13,000 residents, ***356** was served-but not very well-by a single, for-profit cable company. The citizens were unhappy with the quality and the price of their cable TV service, so they turned to their municipally owned electric system for help. This plea from the public coincided with the city utility's recognition of the need for an effective demand-side management and load shedding system to avoid huge increases in power costs driven by surges in peak power demand. The Glasgow Electric Plant Board recognized that the same coaxial cable system used to deliver television programming could also be utilized by citizens to manage their power purchases. So our municipally owned electric utility built its coaxial distribution control system which also provides a competing, consumer- owned cable TV system. This new system not only allowed consumers to purchase electricity in real time and lower their

peak electrical demand, thus saving money on their electric bills, it provided twice as many television channels as the competing, for-profit cable company at not-for-profit rates-and delivered better service. to boot. Big surprise-the private company decided to drop its rates by roughly 50 percent and improve its service, too.

But the Glasgow Electric Plant Board didn't stop there. We wired the public schools, providing a two-way, high-speed digital link to every classroom in the city. We are now offering high-speed network services for personal computers that give consumers access to the local schools' educational resources and the local libraries. Soon this service will allow banking and shopping from home, as well as access to all local government information and data bases. We are now providing digital telephone service over our system. That's right-in Glasgow, everyone can now choose to buy their dial tone from either GTE or the Glasgow Electric Plant Board.

The people of Glasgow won't have to wait to be connected to the information superhighway. They're already enjoying the benefits of a two-way, digital, broadband communications system. And it was made possible by the municipally owned electric system.

The Long And The Short Of It

While public power systems played a particularly important role in providing electric service to smaller and more isolated communities, their value and their existence is not limited just to these environs. Indeed, APPA counts among its membership such large public power systems as the South Carolina Public Service Authority, the Los Angeles Department of Water and Power and the Sacramento Municipal Utility District in California, the Salt River Project in Arizona, the Lower Colorado River Authority in Texas, the Jacksonville Energy Agency in Florida and others.

Public ownership of electric distribution systems is just as important in large cities as in small, rural towns. Public power brings the same benefits, regardless of the population of the community it serves-lower rates, consumer ownership, not-for-profit organization, and better service, among many others.

Just as public ownership of electric utilities should not be restricted to only smaller communities, nor should public ownership of communications infrastructure be limited. Indeed, the larger public power systems have developed some of the most sophisticated, state-of-the-art communications system. Their consumers, too, are enjoying the benefits of public ownership and are positioned to enjoy the rewards of high-speed voice, data and video services delivered in whole or in part over publicly owned infrastructure.

What's Past Is Prologue

The importance of maintaining the option of public ownership of telecommunications systems is even more important in the deregulation environment that S. 1822 embraces.

To the credit of its authors, S. 1822 would reduce or minimize regulation of telecommunication service providers only in those instances when such providers do not control market power. APPA concurs that vigorous, healthy competition is a preferred alternative to regulation-but only to the extent that consumer owned systems exist to provide the yardstick against which to gauge the rates and quality of service offered by for-profit service providers, and that regulation is maintained for those entities that exercise market power.

Deregulation of the airline industry offers an apt comparison. Federal regulation of routes and rates was dropped under the theory that open market entry would result in healthy competition, which in turn would control rates and services. While this appeared to be the case during the first decade of airline deregulation, tee rapid growth of new service providers eventually yielded to a market shake-out, and smaller airlines and those in poor market positions were gobbled up by their bigger competitors, who often enjoyed advantages in economies of scale and access to more capital at cheaper rates. As a result, the market is now dominated by a smaller number of even bigger national carriers than existed prior to deregulation. The ***357** point is that, even though removing barriers to market entry may initially stimulate competition, after a period of time the market can become even more concentrated than prior to deregulation. Thus, it is essential to maintain regulatory control of those companies that hold market power and to extend regulatory control to those that attain market power. Unlike the airline deregulation legislation, S. 1822 embraces this concept.

Another phenomenon is associated with deregulation of the airline industry. While today there are more flights at cheaper rates to the major cities in the U.S., smaller cities now have less service and higher fares than before deregulation. indeed, a number of cities are no longer served by any of the national carriers.

The same thing almost occurred in the electric utility industry in the first part of this century. In the early days of the industry there were few barriers to entry, and literally thousands of for-profit electric utilities were in operation. By the mid-1920s, 16 holding companies controlled 85 percent of the nation's electricity. But unlike the airline industry, some of America's electricity consumers were served by publicly owned, not-for-profit utilities. Where the investor owned utilities refused to serve, these consumer-owned systems provided the essential electrical services demanded by the public. And these consumer owned utilities also provided a realistic measure of the true cost of service, as well as establishing a standard for quality of service.

We now have the opportunity of gaining the positive aspects of increased competition without enduring the negative aspects of airline deregulation. If consumer-owned, not-for-profit telecommunications systems are encouraged to participate in the construction and operation of the NII, and regulation is maintained for those companies that control or attain market power, all consumers could enjoy the benefits of low-cost, high quality, high speed, interactive video, data and voice communications.

ANALYSIS OF S. 1822

APPA is pleased that S. 1822, unlike its House counterpart, specifically acknowledges the right of electric utilities to provide telecommunications and information services. However, if vague references slip into bill or report language indicating that the "private sector", and not the "government" will construct the NII, public power systems will be excluded from participation.

Although Administration officials have made references to private sector development of the NII, this appears to be a case of unfortunate phraseology, rather than any deliberate intention on their part to exclude public ownership and operation from any segments of the NII. In fact, in a letter to APPA Executive Director Larry Hobart, Vice President Gore wrote that public power's "initiative in this important and rapidly evolving technological field certainly compliments this Administration's efforts toward implementing a national information infrastructure *** Accordingly, we have worked hard to establish a clear set of goals by which government can

ATTACHMENT F

Calendar No. 610

103D CONGRESS *2d Session*	SENATE	REPORT 103–367

COMMUNICATIONS ACT OF 1994

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

together with

ADDITIONAL AND MINORITY VIEWS

ON

S. 1822

SEPTEMBER 14 (legislative day, SEPTEMBER 12), 1994.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
82-939 WASHINGTON : 1994

DEFINITIONS

SEC. 3. For the purposes of this Act, unless the context otherwise requires—

(a) "Wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(b) "Radio communication" or "communication by radio" means the transmission by radio of wiring, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

* * * * * * *

(ee) "Construction permit" or "permit for construction" means that instrument of authorization required by this Act or the rules and regulations of the Commission made pursuant to this Act for the construction of a station, or the installation of apparatus, for the transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

(ff) "Great Lakes Agreement" means the Agreement for the Promotion of Safety on the Great Lakes by Means of Radio in force and the regulations referred to therein.

(gg) [Repealed]

(hh) "Local exchange carrier" means a provider of telephone exchange service that the Commission determines has market power. Such term does not include a person engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service as provided by such person in a State is a replacement for a substantial portion of the wireline telephone exchange service within such State.

(ii) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, including voice, data, image, graphics, or video, without change in the form or content of the information, as sent and received, by means of electromagnetic transmission, with or without benefit of any closed transmission medium.

(jj) "Telecommunications service" means the direct offering of telecommunications for profit to the general public or to such classes of users as to be effectively available to the general public regardless of the facilities used to transmit such telecommunications services. Such term does not include information services or cable services as defined under section 602.

(kk) "Telecommunications carrier" means any provider of telecommunications services, except that such term does not include hotels, motels, hospitals, and other aggregators of telecommunications services.

(ll) "Telecommunications number portability" means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

(mm) "Information service" means the offering of services which employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information, provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information.

(nn) "Rural telephone company" means a telecommunications carrier operating entity to the extent that such entity provides telephone exchange service, including access service subject to part 69 of the Commission's rules (47 C.F.R. 69.1 et seq.), to—

(1) any service area that does not include either—

(A) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recent population statistics of the Bureau of the Census; or

(B) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; or

(2) fewer than 100,000 access lines within a State.

(oo) "Service Area" means a geographic area established by the Commission and the States for the purpose of determining universal service obligations and support mechanisms. In establishing a service area, the Commission and the States shall at a minimum consider—

(1) the principles and requirements of section 201A;

(2) the nature of Federal and State universal service support mechanisms;

(3) the historic area of service by a company and the economics of such company's operations; and

(4) the interest of consumers and competition in such area.

In the case of an area served by a rural telephone company, "service area" shall mean such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

* * * * * * *

SEC. 201A. UNIVERSAL SERVICE PROTECTION AND ADVANCEMENT.

(a) UNIVERSAL SERVICE PRINCIPLES.—The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) Quality services are to be provided at just, reasonable, and affordable rates.

(2) Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) Consumers in rural and high cost areas should have access to telecommunications and information services, including interexchange services, reasonably comparable to those services provided in urban areas.

(4) Consumers in rural and high cost areas should have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas.

movement, manipulation, speech, or interpretation of information, unless the cost of making the services accessible and usable would result in an undue burden or adverse competitive impact. The carrier shall seek to permit the use of both standard and special equipment, and seek to minimize the need of individuals to acquire additional devices beyond those used by the general public to obtain such access.

(2) INQUIRY.—The Commission shall, within 2 years after the date of enactment of the Communications Act of 1994, complete an inquiry into policies, practices, and regulations which address the access needs of individuals with speech disabilities, including those who use electronic speechmaking devices and those who use telephone relay services. The inquiry will develop recommendations for more effective ways to incorporate current specialized consumer product equipment devices into the nation's telecommunications infrastructure in addition to addressing the speech-to-speech translation needs of individuals with significant voice disabilities.

(3) COMPATIBILITY.—Whenever an undue burden or adverse competitive impact would result from the requirements in paragraphs (1) and (2), the manufacturer that designs, develops, or fabricates the equipment or network service shall ensure that such equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access, unless doing so would result in an undue burden or adverse competitive impact.

(4) DEFINITIONS.—As used in this section—

(A) UNDUE BURDEN.—The term "undue burden" means significant difficulty or expense. In determining whether the activity necessary to comply with the requirements of paragraphs (1), (2), and (3) would result in an undue burden, the factors to be considered include:

(i) The nature and cost of the activity.

(ii) The impact on the operation of the facility involved in the manufacture of the equipment or the deployment of the network service.

(iii) The financial resources of the telecommunications equipment manufacturer or telecommunications carrier;

(iv) The financial resources of the manufacturing affiliate of a Bell operating company in the case of manufacturing of equipment, as long as applicable regulatory rules prohibit cross-subsidization of equipment manufacturing with revenues from regulated telecommunications service or when the manufacturing activities are conducted in a separate subsidiary.

(v) The type of operations of the telecommunications equipment manufacturer or telecommunications carrier.

(B) ADVERSE COMPETITIVE IMPACT.—In determining whether the activity necessary to comply with the requirements of paragraphs (1), (2), and (3) would result in adverse competitive impact, the following factors shall be considered:

(i) Whether such activity would raise the cost of the equipment or network service in question beyond the level at which there would be sufficient consumer demand by the general population to make the equipment or network service profitable.

(ii) Whether such activity would, with respect to the equipment or network service in question, put the telecommunications equipment manufacturer or telecommunications carrier at a competitive disadvantage. This factor may be considered so long as competing telecommunications equipment manufacturers and telecommunications carriers are not held to the same obligation with respect to access by persons with disabilities.

(C) ACTIVITY.—For the purposes of this paragraph, the term "activity" includes—

(i) the research, design, development, deployment, and fabrication activities necessary to comply with the requirements of this section; and

(ii) the acquisition of the related materials and equipment components.

(5) COORDINATION IN DEVELOPING REGULATIONS.—Throughout the process of developing regulations required by this paragraph, the Commission shall coordinate and consult with representatives of individuals with disabilities and interested equipment and service providers to ensure their concerns and interests are given full consideration in such process.

(6) EFFECTIVE DATE.—The regulations required by this subsection shall become effective 18 months after the date of enactment of the Communications Act of 1994.

(e) ANNUAL SURVEY.—The Commission shall collect information regarding the deployment of technologies on a State-by-State basis and make such information available to the public.

(f) COST ALLOCATION REGULATIONS.—Notwithstanding any other time period, the Commission shall within 6 months adopt regulations, consistent with the need to protect universal service, to allocate a local exchange carrier's costs of deploying broadband telecommunications facilities between local exchange service and competitive services.

(g) NONDISCRIMINATORY ACCESS.—In considering any application under section 214, the Commission shall ensure that access to such applicant's telecommunications services is not denied to any group of potential subscribers because of their race, gender, national origin, income, age, or residence in a rural or high-cost area.

SEC. 230. TELECOMMUNICATIONS COMPETITION.

(a) REMOVAL OF BARRIERS TO ENTRY.—

(1) Except as provided in subsection (k), one year after the date of enactment of the Communications Act of 1994, no State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services.

(2) No local government may, after 1 year after the date of enactment of the Communications Act of 1994, impose or collect any franchise, license, permit, or right-of-way fee or any assessment, rental, or any other charge or equivalent thereof as a condition for operating in the locality or for obtaining access to, occupying, or crossing public rights-of-way from any telecommunications carrier that distinguishes between or among telecommunications carriers, including the local exchange carrier. For purposes of this paragraph, a franchise, license, permit, or right-of-way fee or an assessment, rental, or any other charge or equivalent thereof does not include any imposition of general applicability which does not distinguish between or among telecommunications carriers, or any tax.

(3) Nothing in this subsection shall affect the application of section 332(c)(3) to commercial mobile services providers.

(4) If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates or is inconsistent with this subsection, the Commission shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

(5) Nothing in this section restricts the ability of any State or local government entity to make its telecommunications facilities available to carriers so long as making such facilities available is not a telecommunications service.

(b) REGULATORY AUTHORITY.—Nothing in this section shall affect the ability of State officials to impose, on a competitively neutral basis and consistent with section 201A, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) OBLIGATIONS OF TELECOMMUNICATIONS CARRIERS.—

(1) To the extent that they provide telecommunications services, telecommunications carriers shall be deemed common carriers under this Act. The Commission shall prescribe regulations consistent with its determinations under subsection (g)(1) to require all telecommunications carriers, upon bona fide request, to provide to any provider of telecommunications equipment or any entity seeking to provide telecommunications services or information services, on reasonable terms and conditions and at rates that are just and reasonable and not unjustly or unreasonably discriminatory—

(A) interconnection to the carrier's telecommunications facilities and services at any technically and economically feasible point within the carrier's network;

(B) nondiscriminatory access on an unbundled basis where technically and economically feasible to any of the carrier's telecommunications facilities and information, including databases and signaling, necessary to the transmission and routing of any telecommunications service or information service and the interoperability of both carriers' networks;

(C) nondiscriminatory access, where technically and economically feasible, to the poles, ducts, conduits, and rights of way owned or controlled by the carrier;

(D) nondiscriminatory access where technically and economically feasible to the network functions and services of the carrier's telecommunications network, which shall be offered on an unbundled basis;

(E) telecommunications services and network functions on an unbundled basis without any unreasonable conditions or restrictions on the resale or sharing of those services or functions, including both origination and termination of telecommunications services (for purposes of this subparagraph, it shall not be deemed an unreasonable condition for a telecommunications carrier, consistent with the Commission's rules and State regulations, to limit the resale of services included in the definition of universal service to another telecommunications carrier who intends to resell that service to a category of customers different from the category of customers being offered that universal service by such carrier, nor shall it be deemed unreasonable to provide services included in the definition of universal service to another telecommunications carrier for resale at rates which reflect the actual cost of providing such services, exclusive of any universal service support received by such carrier in accordance with regulations promulgated under section 201A);

(F) local dialing parity, as soon as technically and economically feasible, in a manner that permits consumers to be able to dial the same number of digits when using any telecommunications carrier providing telephone exchange service or exchange access service through resale in a market, and in a manner that permits all such carriers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, directory listing, and no unreasonable dialing delays; and

(G) telecommunications number portability, as administered by an impartial entity, as soon as technically and economically feasible.

(2) A State may not, with respect to the provision of any intrastate telecommunications service, impose upon any telecommunications carrier any regulatory requirement concerning the provision of intrastate services inconsistent with the requirements imposed by the Commission on such carrier with respect to the provision of interstate services. Nothing in this subsection precludes a State from imposing requirements on a carrier for intrastate services that are necessary to further competition for local exchange or exchange access services, including intraLATA toll dialing parity, as long as the State's actions are not inconsistent with the Commission's regulations.

(d) CONSUMER INFORMATION.—As competition for telecommunications services develops, the Commission and State regulatory authorities shall ensure that consumers are given the information necessary to make informed choices among their telecommunications alternatives. Any telecommunications carrier that provides billing

New subsection (hh) defines a "local exchange carrier" to mean a provider of telephone exchange service that the FCC determines has market power. Such term does not include providers of commercial mobile services except to the extent that such a service is a replacement for a substantial portion of wireline telephone exchange service within a State. The statement regarding providers of commercial mobile service is intended to be consistent with language in section 332 of the 1934 Act. The definition of local exchange carrier is intended to cover a provider of telephone service that the FCC determines has market power *with respect to local exchange service*.

The definition of "telecommunications" in new subsection (ii) is expanded from the version is S. 1822 as introduced to cover all forms of information sent by means of electromagnetic transmission, without regard for the facilities used to provide such service. This definition excludes interactive games or shopping services and other services involving interaction with stored information that qualify as information services. The underlying transport and switching capabilities on which these interactive services are based, however, are "telecommunications services."

The phrase "between or among points specified by the user" is not intended to limit the definition of "telecommunications" to transmission between or among specific fixed points in a carrier's network predetermined or preselected by a user. The definition covers transmission and transport in a carrier's network involving origination and termination points. The definition is intended to include network services employing "virtual" numbers used in 900, 800, 700, and 500 services, for example, and may involve changes in termination. The intention of the phrase is to distinguish between traditional point-to point common carrier services and broadcast services.

The definition of "telecommunication service" in new subsection (jj) was broadened from the version in S. 1822 as introduced to ensure that all entities providing service equivalent to the telephone exchange services provided by the existing telephone companies are brought under title II of the 1934 Act. This expanded definition ensures that these competitors will make contributions to universal service. This definition is intended to include commercial mobile services, competitive access services, and alternative local telecommunications services to the extent that they are offered to the public or to such classes of users as to be effectively available to the public. The Committee does not intend any distinction between the term "general public" and "public."

The term "telecommunications service" does not include information services, cable services, or "wireless" cable services. While the line of distinction between telecommunications services and information services cannot be drawn with scientific certainty, experience has demonstrated the need to draw such a distinction to enable the FCC to tailor its regulations appropriately.

The term "telecommunications service" is not intended to include the offering of telecommunications facilities for lease or resale by others for the provision of telecommunications services. For instance, the offering by an electric utility of bulk fiber optic capacity

(i.e., "dark fiber") does not fall within the definition of telecommunications service.

New subsection (kk) provides a definition of "telecommunications carrier" as any provider of telecommunications services, except for hotels, motels, hospitals, and other aggregators of telecommunications services. For instance, an electric utility that is engaged solely in the wholesale provision of bulk transmission capacity to carriers is not a telecommunications carrier. A carrier that purchases or leases the bulk capacity, however, is a telecommunications carrier to the extent it uses that capacity, or any other capacity, to provide telecommunications services. Similarly, a provider of information services or cable services is not a telecommunications carrier to the extent it provides such services. If an electric utility, a cable company, or an information services company also provides telecommunications services, however, it will be considered a telecommunications carrier for those services.

The definition of "number portability" is clarified from the version in S. 1822 as introduced to make clear that number portability does not allow consumers to travel across the country or across the street and retain their existing telephone number. Number portability allows consumers to retain their existing telephone numbers when switching from one telecommunications carrier to another at the same location.

New subsection (mm) defines "information service" as the FCC has defined it. The definition is intended to provide the FCC with sufficient flexibility to amend its notion of what is and what is not an information service over time as technologies develop.

New subsection (nn) adds a definition of "rural telephone company" that includes companies that either serve a rural area or have fewer than 100,000 access lines within a State.

New subsection (oo) adds a definition of "service area." "Service area" means a geographic area established by the FCC and the States for the purpose of determining universal service obligations and support mechanisms. The FCC and the States shall define the boundaries of each "service area" for both urban and rural areas, consistent with the guidelines, if any, set forth in the statutory language.

Sec. 302.--Regulatory reform

Section 302 of S. 1822 as reported establishes the principles for permitting competition for local telephone service. It adds a new section 230 to the 1934 Act entitled "Telecommunications Competition."

New section 230(a)(1) preempts State and local statutes and regulations, and other State and local legal requirements, that may prohibit or have the effect of prohibiting interstate or intrastate competition for telecommunications services. The preemption is effective 1 year after enactment (except for rural markets described in subsection (k) of new section 230).

Paragraph (2) of new section 230(a) prevents any local government from distinguishing among local exchange carriers and other telecommunications carriers in imposing any franchise or other fee. The creation of a level playing field for the deployment of competitive telecommunications networks and services is of overriding na-

tional concern. Currently, one barrier to the deployment of competitive networks has been the unequal treatment by certain local governments of incumbent network providers and new entrants in the assessment and collection of local franchise fees in connection with the use of public rights-of-way. Some cities have imposed fees on competitors and not telephone companies; others have imposed fees on telephone companies but not competitors. This provision does not limit the authority of local governments to impose franchise or other fees on telecommunications carriers; it simply states that all providers of telecommunications service must be subject to the same franchise fee requirements as traditional local exchange carriers, and vice versa.

Paragraph (2) also states that States or local governments may make their own telecommunications facilities available to certain carriers and not others so long as making such facilities available is not a telecommunications service. This provision essentially allows a State or local government to discriminate not in the regulations it imposes, but in its offering of State-owned or local-owned telecommunications carriers. For instance, some State or local governments own and operate municipal energy utilities with excess fiber optic capacity that they make available to telecommunications carriers. Such municipal utility may not have sufficient capacity to make it available to all carriers in the market. This provision clarifies that State or local governments may sell or lease capacity on these facilities to some entities and not others without violating the principle of nondiscrimination. Since the offering of telecommunications capacity alone is not a "telecommunications services," the nondiscrimination provisions of this section would not, in any case, apply to the offering of such capacity.

The FCC shall, under paragraph (4) of new section 230(a), preempt any State or local government provision that violates section 230(a). This paragraph does not cast any presumption as to the legality of any State or local provision. A State or local government regulation or provision can only be preempted if the FCC determines, after notice and an opportunity for public comment, that such statute, regulation, or other legal requirement violates or is inconsistent with section 230(a). The public comment period will allow all parties, including competitors and Government officials, to present their positions to the FCC for consideration. The FCC must base any decision under this paragraph on the record before it.

Subsection (b) of new section 230 recognizes, consistent with the provisions of subsection (a), that States may impose, on a competitively neutral basis and consistent with the universal service directives of new section 201A of the 1934 Act, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. For instance, States, and local authorities to the extent they are authorized by such State, continue to have the authority to impose competitively neutral universal service charges on all telecommunications carriers, to govern the use of rights-of-way, or to require telecommunications carriers to register with State or local business offices. States may not exercise this authority in a way that has the effect of imposing entry barriers or other prohibitions preempted by new

section 230(a). Subsection (b) is not intended to confer any additional authority to impose universal service requirements; all such authority is contained in new section 201A.

Subsection (c) of new section 230 sets forth the basic obligations of all telecommunications carriers to open and unbundle their networks in order to permit competition to develop. All telecommunications carriers shall be deemed common carriers, which makes them subject to Title II of the 1934 Act.

The intention of the Committee is that, in general, and except for rural markets, competition should be allowed to develop for local telecommunications services using certain of the facilities and services of existing and competitive carriers. It is unrealistic at this point to expect that competitors will be able to build their own stand-alone networks completely separate from the facilities of the existing local telephone companies. If access to a carrier's existing network and services is not made available to potential competitors, information providers, and providers of equipment, competition for local telecommunications service will be unlikely to become a reality for the vast majority of consumers. The Committee expects that competition will provide consumers substantial benefits in terms of technological innovation and lower prices.

This subsection, however, allows the FCC significant flexibility in the enforcement of these requirements. First of all, the FCC may forbear from applying most of these provisions to particular carriers or classes of carriers, or services or classes of services, if it determines that the carrier or service meets the criteria set forth under subsection (g) of new section 230. Second, carriers must comply with the unbundling and other obligations of subsection (c) only "upon bona fide request." Third, the FCC's regulations direct the carriers to comply on "reasonable terms and conditions." The Committee expects, for instance, that it is only reasonable for the carriers who provide such interconnection to be compensated for their costs of complying with these obligations by those who benefit from them. Fourth, the interconnection and unbundling requirements generally apply only where "technically and economically feasible," which was the standard suggested by Mr. Cullen, President of Bell Atlantic, in his testimony before the Committee on behalf of the RBOS. Fifth, subsection (l) of new section 230 requires the FCC to modify these obligations for rural telephone companies and allows the FCC to waive or modify these obligations for any carrier with less than 2 percent of the Nation's access lines. Finally, subsection (k) recognizes that States may adopt rules to protect against competition in certain rural markets.

Thus, the legislation provides the FCC with flexibility to tailor its regulations to implement these obligations to the needs and resources of the existing carrier and the potential competitors. The Committee expects, however, that the FCC will develop regulations to implement the requirements of subsection (c)(1) that will allow competition to have the opportunity to develop in most markets around the country.

Subsection (c) of new section 230 requires all telecommunications carriers to provide interconnection to their networks upon request. Section 332(c)(1)(B) of the 1934 Act permits the FCC to order a common carrier to establish physical connections, upon request,

ATTACHMENT G

Mr. HOLLINGS. Mr. President, you have to be sure of foot to be opposing two distinguished former mayors. The Senator from California is the former mayor of San Francisco, and the distinguished Senator from Idaho is a former mayor of Boise. Both had outstanding records.

But let me suggest that what they have read into the preemption section is a requirement and an idea that just does not exist at all. I will have to agree with them in a flash that the Federal Communications Commission has no idea of coordinating, as the Senator from Idaho has outlined, the digging up in front of all of the sidewalks and stores and everything else, putting in the regular necessary conduit, refirming the soil and the sidewalks again in front. We have no idea of the FCC doing it.

Let us tell you how this comes about. Section 254 is the removal of the barriers to entry, and that is exactly the intent of the Congress, and it says no Government in Washington should, well, vote against it. But I think the two distinguished Senators are not objecting to the removal of the barriers to entry. What we are trying to do is say, now, let the games begin, and we do not want the States and the local folks prohibiting or having any effect of prohibiting the ability of any entity to enter interstate or intrastate telecommunications services. When we provided that, the States necessarily came and said, wait a minute, that sounds good, but we have the responsibilities over the public safety and welfare. We have a responsibility along with you with respect to universal service.

So what about that? How are we going to do our job with that overencompassing general section (a) that you have there. So we said, well, right to the point: "Nothing in this section shall affect the ability of a State to impose on a competitively neutral basis"—those are the key words there, the States on a competitively neutral basis, consistent with opening it up—"requirements necessary."

We did not want and had no idea of taking away that basic responsibility for protecting the public safety and welfare and also providing and advancing universal service. So that was written in at the request of the States, and they like it. The mayors came, as you well indicate, and they said we have our rights of way and we have to control—and every mayor must control the rights of way.

So then we wrote in there:

Nothing shall affect the authority of a local government to manage the public rights of way or to acquire fair and reasonable compensation . . . on a competitively neutral and nondiscriminatory basis.

"Competitively neutral and nondiscriminatory basis." Then we said finally, indeed, if they do not do it on a competitively neutral or nondiscriminatory basis, we want the FCC to come in there in an injunction. We do not want a district court here interpreting here and a district court in this hometown and a Federal court in that hometown and another Federal court with a plethora of interpretations and different rulings and everything else. We are trying to get uniformity, understanding, open competition in interstate telecommunications—and intrastate, of course, telecommunications.

Now, that was the intent and that is how it is written. And if our distinguished colleagues have a better way to write it, we would be glad and we are open for any suggestion. But somewhere, sometime in this law when you say categorically you are going to remove all the barriers to entry, we went, I say to the Senator, with the experience of the cable TV. I sat around this town—I was in an advantaged section up near the cathedral. I had the cable TV service, but two-thirds of the city of Washington here did not have it for years on end because we know how these councils work. We know how in many a city the cable folks took care of just a couple of influential councilmen, and they would not give service or could give service or run up the price and everything else of that kind.

We have had experience here with the mayors coming and asking us. And this is the response. That particular section (c) is in response to the request of the mayors. If they do not do that, if they put it, not in a competitively neutral basis or if they put it in a discriminatory basis, then who is to enjoin? And we say the FCC should start it. Let us not go through the Administrative Procedures Act. Let us not go through every individual.

Yes, we want those mayors and all to come here and everybody to understand rules are rules and we are going to play by the rules and the rules protect those mayors to develop, to administer, to coordinate. I agree 100 percent. I say to the Senator from Idaho, that the FCC has never performed the job of a city mayor. But they shall and must perform this job here of removing the barriers to entry. And if we do not have them doing it, then I will yield the floor and listen to what suggestion they have. But do not overread the preemption section to other than centralizing the authority and responsibility in the FCC to make sure, like they have in administering all the other rules relative to communications here and all the other entities involved in telecommunications, they have that authority to make sure while the cities got their rights of way, while the States have got their public welfare and public interest sections to administer, that it is done on a nondiscriminatory basis.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I would like to respond to my two friends, the floor managers of this bill, and then I know the Senator from California would also like to respond.

They referenced, of course, section 254, which is removal of barriers to entry. That is the section and that is the key. They stated it:

That no State, local statute or regulation or other State or local legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services.

Period. Period. And nothing in this amendment alters that at all. We affirm that. It is my impression, Mr. President, that when it is referenced that section (b), State regulatory authority, yes, the States feel that that language is good; and section (c), local government authority, yes, mayors had something to do with the writing of that language. They feel good about that. But the problem is, then you go on to section (d) which, it is my understanding, came very late in the process. In section (d), there is this line that says: "The Commission shall immediately preempt * * *"

We see this so many times with Federal legislation: On the one hand, we give but, on the other hand, we take it away. In section (b) and section (c) we give, but, by golly, we have section (d) that then says that this Commission will immediately preempt. That is the problem. We are not saying that we should not be held accountable to this. That is why there is no language in this amendment to alter the opening statement of section 254. No problem. It is section (d) that then comes right along and, after everything has been said, preempts and pulls the plug, and that is wrong. We should not do this to our local and State partners. It is absolutely wrong.

I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, my colleague from Idaho took the words right out of my mouth. I think he is exactly right in his interpretation of this section. The barrier for entry is clearly done away with by this section. Nothing Senator KEMPTHORNE or I would do would change that. What we do change, however, is simply delete the ability of a remote technical commission to overturn a city decision and create an enormous hassle for cities all across this Nation.

I would like to just give you the exact wording of what the city attorney of Los Angeles said this section does. He says:

It proposes sweeping review powers for the FCC and, in effect, converts a Federal administrative agency into a Federal administrative court. The FCC literally would have the power to review any local government action it wishes, either on its own or at the request of the industry.

A Federal agency, with personnel who do not directly respond to the public, will be dictating in fine detail what rules local government and their citizens across the country shall have to follow. The FCC would be

given plenary power to decide what actions of local government are "inconsistent with" the very broad provisions in the bill and, without further review, hold the authority to nullify or preempt state and local governmental actions. That is an unprecedented and far-reaching authority for a Federal agency to have over local government.

I could not agree more. Senator KEMPTHORNE and I were both mayors at one time and we both understand that every city has different needs when it comes to cable television.

I remember as the mayor of San Francisco when Viacom came into the city. It wired just the affluent sections of the city. It refused to wire the poorer areas of the city. Unless local government had the right to require that kind of wiring, it was not going to be done at all. That is just one small area with which I think everyone can identify.

But when it comes to the rights-of-way and what is under city streets the city must be in the position to set rules and regulations by which its street can be cut. This preemption gives the FCC the right to simply waive any local rulemaking and say that is not going to be the case. It gives the FCC the right to waive any local fee and say, "That's not the way it is going to be."

That is why countless cities and counties across the country, not just one or two, but virtually all of the big organizations, including the League of Cities, the national Governors, local officials and others, say, "Don't do this." If a cable company has a problem with anything we in local government do, let them go to court. Let a court in our jurisdiction settle the issue. I think that is the right way to go. For the life of me, I have a hard time understanding why people would want to preempt these local decisions with the technical, far-removed FCC agency.

So I think Senator KEMPTHORNE has well outlined the situation. I think we have made our case.

I thank the Chair.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, the distinguished colleague from Idaho said "came so late in the process." I want to correct that thought. I am referring back over a year ago to a bill with 19 cosponsors, this same language:

* * * the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates or is inconsistent with this subsection, the Commission shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

It did not come late in the process. We have been working with mayors and we have several former mayors who were cosponsors. That was S. 1822. So this is S. 652, which is, of course, over a year subsequent thereto.

Is it the language that is inconsistent with this subsection? Is that the bothersome part? It sort of bothers this Senator. I think if you are going to violate your authority with respect to being neutral and nondiscriminatory and you have to have somewhere this authority, in the entity of the FCC, to do it rather than the courts, each with a plethora of different interpretations and law, I would think if we could take that, maybe that would satisfy the distinguished Senator from California and the Senator from Idaho.

I yield the floor. I make that as a suggestion.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I appreciate the good efforts of the Senator from South Carolina, because I have always found him to be a gentleman whom I can work with and we can find areas on which we can see some common ground.

With regard to my comment that it came late in the process, this may be a concept that had been discussed quite a bit, but the mayors that the Senator from South Carolina referenced, it was local officials who told me that this particular language of (d) was not in the draft bill's language, it was not part of the draft bill when it came out. And it was really after Senator HUTCHISON from Texas, who raised this issue, had section (c) added that (d) then came back.

I do not know, it may have been something that has been discussed for some months, but as far as putting it in the bill, it was not there.

The other point then about how do we deal with this, again, Senator FEINSTEIN and I are in absolute agreement that with respect to this whole issue of removal of barriers to entry, if there are problems, if a cable company is getting a bad deal and being put off by a local government, they can go to court, but they go to court in that area, they do not have to come to Washington, DC.

The avenue for remedy already exists, so why do we then say, again, everyone must come to Washington, DC?

That is expensive. I think it is unnecessary and these cable companies, if there had been particular problems and there is a trend, they can establish a precedence in the court, and I think the local communities are going to realize if there is something wrong, they will not do it again because they will lose in court. I think the spirit in which Senator FEINSTEIN and I have joined in this is on behalf of State and local governments, that they are going to own up to their responsibilities. Let us not make them come to Washington, DC, and not make every one of them subject to the FCC in Washington, DC.

I yield the floor.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I wanted to speak very briefly on this. I know our whip is here with some business.

First of all, I think we have to put this in context. As Senator HOLLINGS has pointed out, this section has been the result of hours and days of negotiations with city officials. It was in S. 1822 last year, and it is here. I think we have to take a step back and look at some of the cable deals and problems that have occurred in our cities. The cities have granted exclusive franchises in some cases and are not allowing competition. They have required certain programming be put on and other requirements on those companies.

Our States have granted, in the telephone area, certain exclusive franchises, not allowing competition. And the point is, if we are having deregulation here, removal of barriers to entry, we have to take this step. I think that is very important for us to considerate this point.

Now, section 254 goes to the very heart of this bill, because removal of barriers to entry is what we are trying to accomplish with this bill. We preempt any State or local regulation or statute or State or local legal requirement that may prohibit or have the effect of prohibiting the ability of any entity to provide telecommunications services.

The authority granted to the FCC in subsection (d) is critical if we are going to open those markets, because a lot of States and cities and local governments may well engage in certain practices that encourage a monopoly or that demand certain things from the business trying to do business. That would not be in the public interest.

At the same time, make no mistake about it, Mr. President, the authority granted in subsection (b) and (c) to the State and local authorities, respectively, are more than sufficient to deal in a fairhanded and balanced manner with legitimate concerns of State and local authority. These were negotiated out with State and local authorities.

We have worked closely with Senator HUTCHISON and the city, county and State officials to strike a balance. We have gone to great pains and length to deal with concerns of the cities, counties, and State governments that are legitimately raised. We dealt with the concerns in subsection (b) and (c), while at the same time setting up a procedure to preempt where local and State officials act in an anticompetitive way, by taking action which prohibits, or the effect of prohibiting, entry by new firms in providing telecommunications services.

Now, the real problem created by the amendment offered by my friends, Senators FEINSTEIN and KEMPTHORNE, is that the very certainty which we are trying to establish with this legislation is put at risk. Certainty. A company has to go out and wonder if that local city or State will put some requirement on it to provide some kind of programming, or even to do something in

ATTACHMENT H

From the Senate Reports Online via GPO Access
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104th Congress Report
SENATE
2d Session 104-230

TELECOMMUNICATIONS ACT OF 1996

February 1, 1996.--Ordered to be printed

. . .

new section 253--removal of barriers to entry

Senate bill

Section 20(a) adds a new section 254 to the Communications Act and is intended to remove all barriers to entry in the provision of telecommunications services.

Subsection (a) of new section 254 preempts any State and local statutes and regulations, or other State and local legal requirements, that may prohibit or have the effect of prohibiting any entity from providing interstate or intrastate telecommunications services.

Subsection (b) of section 254 preserves a State's authority to impose, on a competitively neutral basis and consistent with universal service provisions, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. States may not exercise this authority in a way that has the effect of imposing entry barriers or other prohibitions preempted by new section 254(a).

Subsection (c) of new section 254 provides that nothing in new section 254 affects the authority of States or local governments to manage the public rights-of-way or to require, on a competitively neutral and nondiscriminatory basis, fair and reasonable compensation for the use of public rights-of-way, on a nondiscriminatory basis, provided any compensation required is publicly disclosed.

Subsection (d) requires the Commission, after notice and an opportunity for public comment, to preempt the enforcement

of any State or local statutes, regulations or legal requirements that violate or are inconsistent with the prohibition on entry barriers contained in subsections (a) or (b) of section 254.

Subsection (e) of new section 254 simply clarifies that new section 254 does not affect the application of section 332(c)(3) of the Communications Act to CMS providers.

Section 309 adds a new section 263 to the Communications Act and is intended to permit States to adopt certain statutes or regulations regarding the provision of service by competing telecommunications carriers in rural markets. Such statutes or regulations may be no more restrictive than the criteria set forth in section 309. The Commission is authorized to preempt any State statute or regulation that is inconsistent with the Commission's regulations implementing this section.

House amendment

The House provisions are identical or similar to subsections 254(a), (b) and (c). The House amendment does not have a similar provision (d) requiring the Commission to preempt State or local barriers to entry, if it makes a determination that they have been erected.

Conference agreement

The conference agreement adopts the Senate provisions.

New section 253(b) clarifies that nothing in this section shall affect the ability of a State to safeguard the rights of consumers. In addition to consumers of telecommunications services, the conferees intend that this includes the consumers of electric, gas, water or steam utilities, to the extent such utilities choose to provide telecommunications services. Existing State laws or regulations that reasonably condition telecommunications activities of a monopoly utility and are designed to protect captive utility ratepayers from the potential harms caused by such activities are not preempted under this section. However, explicit prohibitions on entry by a utility into telecommunications are preempted under this section.

The rural markets provision in section 309 of the Senate bill is simplified and moved to this section. The modification clarifies that, without violating the prohibition on barriers to entry, a State may require a competitor seeking to provide service in a rural market to meet the requirements for designation as an eligible telecommunications carrier. That is, the State may require the competitor to offer service and advertise throughout the service area served by a rural telephone company. The provision would not apply if the rural

telephone company has obtained an exemption, suspension, or modification under new section 251(f) that effectively prevents a competitor from meeting the eligible telecommunications carrier requirements. In addition, the provision would not apply to providers of CMS.

ATTACHMENT I

DAN SCHAEFER
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TELECOMMUNICATIONS AND FINANCE
COMMITTEE ON VETERANS' AFFAIRS
EDUCATION, TRAINING, EMPLOYMENT AND HOUSING

Congress of the United States
House of Representatives
Washington, D.C.

August 5, 1996

The Honorable Reed H. Hundt
Chairman
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-98 and CCBPol 96-14

Dear Chairman Hundt:

One of the fundamentals of free market competition is the ability of firms to enter a business easily and rapidly. It is for that reason that we include a provision in the Telecommunications Act of 1996 -- section 253(a) -- prohibiting state or local governments from imposing barriers to the provision of telecommunications service by any entity. The Commission is considering the implementation of this section in numerous proceedings, including the major dockets implementing sections 251 and 252 (CC Docket No. 96-98) and the proceeding considering the preemption of the Texas telecommunications law (CCBPol 96-14).

It is especially important for the Commission to note the fact that section 253(a) prohibits the imposition of barriers on "any entity". In other words, state and local governments are prohibited from adopting laws or regulations that permit some entities to enter the market while excluding others. Such discrimination is simply unlawful.

More specifically, it is clear from the report language in the Conference Agreement that Congress recognized that utilities may play a major role in the development of facilities-based local telecommunications competition and that any prohibition on their provision of service should be preempted. This language states: "[E]xplicit prohibitions on entry by a utility into telecommunications are preempted under this section." The Commission thus must reject any state or local action that prohibits entry into the telecommunications business by any utility, regardless of the form of ownership or control. In addition, the Commission should ensure its interconnection and access regulations treat utilities the same as other entities.

Thank you for your attention to this matter. We look forward to hearing from you and seeing the Commission's decisions implementing this critical provision.

Sincerely,

DAN SCHAEFER
Member of Congress

ATTACHMENT J

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

September 9, 1996

The Honorable Dan Schaefer
U.S. House of Representatives
2353 Rayburn House Office Building
Washington, D.C. 20515-0606

Dear Congressman Schaefer:

Thank you for your letter regarding the implementation of section 253(a) of the Telecommunications Act of 1996. I appreciate having your views on this important subject, and share your concern that all firms be able to enter telecommunications markets easily and rapidly.

Section 253(a) is intended to remove statutory and/or regulatory impediments to the provision of competitive telecommunications services. Specifically, section 253(a) prohibits state or local governments from imposing regulations which may prohibit or have the effect of prohibiting any entity from providing any telecommunications service. In your letter, you noted that Congress recognized that utilities may play an important role in the development of facilities-based local telecommunications competition and concluded that the Commission must preempt any state or local action that prohibits any utility from entering the telecommunications business, regardless of the form of ownership or control of the utility.

In a petition filed by the IntelCom Group (U.S.A.), Inc. ("IntelCom"), the FCC has been asked to preempt the enforcement of a Texas statute that restricts the ability of a municipality or municipal electric system to offer certain telecommunications services. IntelCom's petition has been consolidated with a number of other petitions seeking preemption of various aspects of existing Texas telecommunications law. Comments and reply comments have been filed in this consolidated proceeding and a copy of your letter has been placed in the record.

FCC staff is currently reviewing the entire record in this proceeding. Please be assured that your letter will be considered carefully as we address the issues raised by the petitioners and the commenters. Thank you for your interest and comments on this matter and I look forward to working with you in the future.

Sincerely,

Reed E. Hundt
Chairman

ATTACHMENT K

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

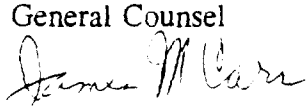
CITY OF ABILENE, TEXAS, et al., Petitioners,	)	
v.	)	No. 97-1633 (and consolidated case)
FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA, Respondents.	)	

CERTIFIED LIST OF ITEMS IN THE RECORD

The Federal Communications Commission herewith files a certified list of items comprising the record of Commission proceedings in the above-captioned consolidated cases. The filing consists of (1) a list of items comprising the record and (2) a certificate of the Commission's Secretary.

Respectfully submitted,

Christopher J. Wright
General Counsel



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December 11, 1997